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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTYIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES AVERY CRAFTSMAN, LLC,

Plaintiff,

v.

SAM MOON TRADING ENTERPRISES, LTD.,
dba SAM MOON TRADING CO.; MOON
BROTHERS MANAGEMENT, INC. dba SAM
MOON GROUP; JC & ME COLLECTION,
INC.; and MODERN SILVER JEWELRY, INC.*Defendants.*§
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No. 5:16-cv-463-OLG

DEFENDANT'S UNOPPOSED MOTION TO EXTEND TIME FOR ANSWER

NOW COMES Defendant Modern Silver Jewelry, Inc. ("Defendant") and hereby requests the Court to extend the time to respond to Plaintiff's Complaint, pursuant to Federal Rules of Civil Procedure Rule 6(b)(1)(B). The Defendant is concurrently submitting its Answer and therefore requests that the time to respond be extended merely to the extent necessary to allow the Defendant's Answer to be received and considered timely by this Court. The Defendant requests this with the belief that this in the interests of justice and judicial economy for all parties involved and the Court. The plaintiff, James Avery Craftsman, LLC, and other appearing defendant, Sam Moon Trading Enterprises, LTD., have agreed to not oppose this motion.

FACTS

On August 16, 2016 the Plaintiff filed the First Amended Complaint. On September 21, 2016 the Court granted an unopposed motion to extend the time to file an Answer to October 17,

2016. The Defendant, Modern Silver Jewelry, Inc., did not timely submit an Answer though the other defendants did.

The Defendant did attempt to secure legal representation prior to the deadline to respond but was unable to do so until the evening of October 17, 2016. A significant contributing factor is the fact that the Defendant's representative, Mr. Souk David Thongdara, is not a native English speaker and failed to understand the nature of the relationship among the multiple defendants of this case and specifically the need for independent legal counsel. Furthermore, the Defendant's attorney received documents and information relevant to the case deadlines on October 18, 2017 – already beyond the deadline.

LEGAL ARGUMENT

A. THE COURT HAS THE POWER TO EXTEND THE TIME FOR ANSWERS

Rule 6(b) states in pertinent part that “(1) When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or (B) on motion made after the time has expired if the party failed to act because of excusable neglect.”

As the deadline to Answer was only just passed, and as our (Defendant and Defendant's Attorney) failure to file a timely answer to the complaint was due to inadvertence or excusable neglect, the Defendant here respectfully requests the Court grant an extension of time to submit an Answer, which has been con-currently filed with this motion.

B. THE COURT HAS JUDICIAL DISCRETION

Despite the missed deadline, an order for summary judgment has not been made. An order granting extension now would not work an injustice upon the Plaintiff or other defendants as they have agreed to not oppose this motion. It is the honest belief and opinion of the Defendant that granting this extension to allow an Answer would be in the best interests of all of the parties involved as well as the court because it would negate the need for future motions to set aside the default judgment and potentially having to retry this matter as to this Defendant. This motion and request has not been made for the purpose of delay.

PRAYER

Defendant respectfully moves Court to enter an order, as proposed or otherwise, setting the deadline for Defendant's Answer as November 4th, 2016.

Dated: November 3rd, 2016

RESPECTFULLY SUBMITTED,

by:

Eric A. Hinojosa
Eric A. Hinojosa
SBoT No. 24092519

The Law Office of Eric Hinojosa PLLC
190 Palma Noce
San Antonio, Texas 78253
210-722-0312
eric@ehiplaw.com

ATTORNEY FOR DEFENDANT,
MODERN SILVER JEWELRY, INC.

Certificate of Conference

I hereby certify that I conferred with Daniel Harkins, counsel for the Plaintiff James Avery Craftsman, LLC, and Ben Setnick, counsel for the Defendants, Sam Moon Enterprises, LTD. and Moon Brothers Management, Inc., concerning the foregoing motion and they have agreed that they do not oppose it or the relief requested therein.

by:

Eric A. Hinojosa
Eric A. Hinojosa, SBoT No. 24092519
The Law Office of Eric Hinojosa PLLC
190 Palma Noce
San Antonio, Texas 78253
Attorney for Defendant

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been served upon the following parties and attorneys via email, pursuant to Rule the Federal Rules of Procedure, on this the 3rd day of November, 2016.

Served Upon: Dykema Cox Smith
112 E. Pecan Street, Suite 1800
San Antonio, TX 78205
Attorney for Plaintiff, James Avery Craftsman, Inc.

Matthew G. Nielsen
Benjamin J. Setnick
1717 Main Street, Suite 3700
Dallas, Texas 75201
Attorneys for Defendants, Sam Moon Enterprises, LTD. and Moon Brothers Management, Inc.

by:

Eric A. Hinojosa
Eric A. Hinojosa, SBoT No. 24092519
The Law Office of Eric Hinojosa PLLC
190 Palma Noce
San Antonio, Texas 78253
Attorney for Defendant